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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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|------------------------|--|
| Proceeding | 91180742 |
| Party | Plaintiff Dr Pepper/Seven Up, Inc. |
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| Submission | Motion to Consolidate |
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| Date | 11/28/2007 |
| Attachments | Motion to Consolidate (F0141354).PDF (6 pages)(1497297 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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| -----X | : | |
| DR PEPPER/SEVEN UP, INC., | : | |
| | : | |
| Opposer, | : | |
| | : | |
| - against - | : | Opposition No. 91180742 |
| | : | |
| KRUSH GLOBAL LIMITED, | : | |
| | : | |
| Applicant. | : | |
| -----X | : | |

-- and --

| | | |
|---------------------------|---|---------------------------|
| -----X | : | |
| DR PEPPER/SEVEN UP, INC., | : | |
| | : | |
| Petitioner, | : | |
| | : | |
| - against - | : | Cancellation No. 92048446 |
| | : | |
| KRUSH GLOBAL LIMITED, | : | |
| | : | |
| Registrant. | : | |
| -----X | : | |

OPPOSER'S MOTION TO CONSOLIDATE PROCEEDINGS

Dr Pepper/Seven Up, Inc. ("DPSU"), by its attorneys, hereby moves the Trademark Trial and Appeal Board (the "Board") for an order consolidating the above-identified proceedings concerning Application Serial No. 79/033,050 and Registration No. 3,275,548, both for the mark CRUSSH and both owned by Krush Global Limited ("Krush Global"). A full statement of the grounds for the motion and the memorandum in support of the motion, as required by 37 C.F.R. § 2.127(a), are set forth below.

BACKGROUND

Since at least as early as 1916 and continuing through the present, DPSU, through its predecessors in interest, has used the marks CRUSH and ORANGE CRUSH (collectively, the "CRUSH Marks") for beverage products. DPSU owns numerous U.S. registrations for the CRUSH Marks, including in International Classes 3, 25, 30 and 32.

On October 5, 2006, Krush Global filed as application Serial No. 79/030,220 a request for extension of protection of an International Registration to the United States under Section 66(a) of the Lanham Act for the mark CRUSSH for food service-related services in International Class 43. The application matured to Registration No. 3275548 (the "CRUSSH Registration") on August 7, 2007.

On October 10, 2006, Krush Global filed as application Serial No. 79/033,050 a request for extension of protection of an International Registration to the United States under Section 66(a) of the Lanham Act for the mark CRUSSH & Design for various food and beverage items in International Classes 29 and 32, and for food service-related services in International Class 43 (the "CRUSSH & Design Application"). The International Class 43 services identified in the CRUSSH & Design Application are identical those identified in the CRUSSH Registration. The CRUSSH & Design Application was published for opposition on July 17, 2007.

On November 12, 2007, DPSU filed a Notice of Opposition against the CRUSSH & Design Application and filed a Petition for Cancellation against the CRUSSH Registration. The opposition proceeding was instituted on November 14, 2007 as Opposition No. 91180742, and the cancellation proceeding was instituted on November 16, 2007 as Cancellation No. 922048446.

In both the opposition and cancellation proceedings, DPSU relies on its ownership of the same CRUSH Marks and alleges that Krush Global's CRUSSH marks, when used on or in connection with the identified goods or services, are likely to cause confusion with DPSU's prior-used and registered CRUSH Marks.

This motion seeks to consolidate DPSU's two proceedings against Krush Global's CRUSSH marks into a single proceeding based on the discovery and trial schedules set by the Board in connection with the later-instituted proceeding, Cancellation No. 922048446.

Prior to bringing this motion, DPSU sought Krush Global's consent to consolidation. Counsel for Krush Global provided no response to DPSU's request for consent, neither assenting to the requested consolidation nor offering any reasons why consolidation would be inappropriate.

ARGUMENT

DPSU seeks consolidation of DPSU's two proceedings now pending against Krush Global and its CRUSSH marks because the proceedings involve the identical parties, virtually identical marks, and common questions of law and fact. The Board may, in its discretion, consolidate pending cases in such circumstances. *See* Fed. R. Civ. P. 42(a); *see also Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 U.S.P.Q.2d 1154 (T.T.A.B. 1991). "In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense, which may be gained from consolidation, against any prejudice or inconvenience that may be caused thereby." TBMP § 511.

Here, consolidating the two proceedings filed by DPSU against Krush Global's CRUSSH marks will save time, effort and expense and will not prejudice or inconvenience either the

parties or the Board. First, each proceeding involves the identical parties and identical issues of law. In each opposition, DPSU objects to registration of Krush Global's CRUSSH marks on the ground that there is a likelihood of confusion between those marks and DPSU's prior-used and registered CRUSH Marks. Due to the identity of the parties and the underlying legal questions, consolidation will save time, effort and expense because it will obviate the need for either party to duplicate discovery, testimony or arguments in two separate proceedings. It also will obviate the need for the Board to consider the identical evidence, testimony and arguments in two separate proceedings. Thus, consolidation will save time, effort and expense.

Second, the two proceedings also involve virtually identical marks: the word mark CRUSSH standing alone in the cancellation proceeding, and the word CRUSSH with a design element in the opposition proceeding. That both of Krush Global's marks at issue include the word CRUSSH is far more significant than any slight differences that may be imparted by the non-distinctive design element. Further, both proceedings involve an objection to registration of Krush Global's marks for identical services in International Class 43.

Third, both proceedings are still in the earliest stages, having been instituted just two weeks ago. Krush Global has not even filed an answer in either proceeding. Therefore, resetting the dates in the first-instituted opposition proceeding to match those in the later-instituted cancellation proceeding will not unduly delay the first proceeding or prejudice either party.

The fact that the cancellation proceeding involves only services in International Class 43 while the opposition proceeding involves goods in International Classes 29 and 32 as well as services in International Class 43 is not a basis for denying consolidation. All of Krush Global's involved goods and services are related to the beverage and food products on which DPSU has

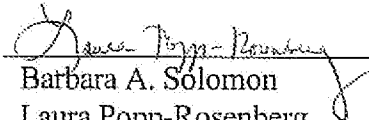
long used its CRUSH Marks. Thus, the additional classes of goods at issue in the opposition proceeding should not unduly complicate the proceeding.

CONCLUSION

For the reasons stated above, DPSU respectfully requests that the Board grant its motion to consolidate DPSU's two proceedings currently pending against Krush Global and its CRUSSH marks: Opposition No. 91180742 and Cancellation No. 92048446. DPSU also respectfully requests that the Board set the schedule for the consolidated proceedings to match that of the later-instituted proceeding.

Dated: New York, New York
November 28, 2007

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 
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(212) 813-5900

Attorneys for Opposer Dr Pepper/Seven Up, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **Opposer's Motion to Consolidate Proceedings** is being served this 28th day of November, 2007 by being deposited with the United States Postal Service as first class mail, postage prepaid, in envelopes addressed as follows:

in connection with Opposition No. 91180742, to

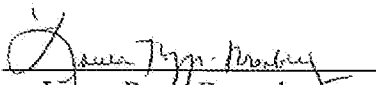
William C. Wright, Esq.
Epstein Drangel Bazerman & James, LLP
60 East 42nd Street, Suite 820
New York, NY 10165,

and in connection with Cancellation No. 92048446, to

Krush Global Limited
65 New Cavendish Street
London W1G 7IS
United Kingdom,

with a courtesy copy to

Ian Wilkes
Groom, Wilkes & Wright LLP
The Haybarn, Upton End Farm Business Park
Meppershall Road, Shillington
Hitchin, Hertfordshire SG5 3PF
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Laura Popp-Rosenberg